



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 07401-98

31 May 2000

MR [REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 25 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 22 June and 23 August 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board substantially concurred with the comments contained in the advisory opinions, except the recommendation in both to remove "and sexual harassment" from the comments concerning your mark in block 35 ("Military Bearing/Character"). They noted that the reporting senior stated you had been found guilty of Articles 80 and 133 of the Uniform Code of Military Justice, but did not mention Article 92, the dismissed charge concerning two specifications of sexual harassment. They were unable to find the reporting senior's statement that you "Demonstrated a blatant disregard for Navy policy and Command standing orders regarding...sexual harassment" was based on the same specifications of sexual harassment which were dismissed.

The Board was unable to find that you were not afforded an opportunity to present your defense at your nonjudicial punishment proceedings, noting you have not proven you were not permitted to ask the witnesses questions that would have elicited exonerating evidence.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY

BUREAU OF NAVAL PERSONNEL
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

7401-96
IN REPLY REFER TO

1611

Ser 834C/982

22 Jun 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters, NPC-OOZCB

Subj: LT [REDACTED] SC, USN [REDACTED]

Ref: (a) BCNR memo 5420 Pers-00ZCB of 8 Jun 99
(b) [REDACTED] fitness report for the period
97DEC20 to 98JUN10
(c) BUPERSINST 1610.10

Encl: (1) BCNR file 07401-98 w/Service Record

1. Reference (a) requested comments and recommendations in response to LT [REDACTED] request to remove reference (b) from his officer permanent personnel record. Enclosure (1) is returned as a matter under the purview of BCNR.

2. [REDACTED] first complains that in reference (b), his reporting senior stated [REDACTED] had violated the Navy's policy on sexual harassment despite dismissing the same charge against [REDACTED] Captain's Mast on 2 May 98.

3. Reference (c) prohibits referencing nonjudicial punishment (NJP) proceedings unless there has been a finding of guilty or award of punishment. Although [REDACTED] was found to have committed other violations of the UCMJ at NJP on 2 May 98, the charge of sexual harassment was in fact, dismissed. Accordingly, recommend redaction of the "...and sexual harassment" (only) portion of the Block 35 comments section of reference (b). [REDACTED] other complaints of inappropriate comments within reference (b) are without merit. Given [REDACTED]'s misconduct and the other findings of his 2 May 98 NJP, his reporting senior's comments are in accordance with reference (c):

4. Other than the redaction recommended in paragraph (2) above, do not recommend removing reference (b) from [REDACTED] record.

[REDACTED]
[REDACTED]
Commander, U.S. Naval Reserve
Director, Personnel Performance &
Security Division
Acting



7401-98

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
23 August 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LTJG [REDACTED] USN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 20 December 1997 to 10 June 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the fitness report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated he desired to make a statement. The member's statement and first endorsement are properly reflected in the member's record.

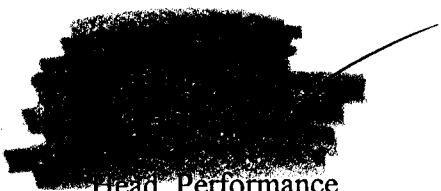
b. The member's argument for removal of the fitness report is based on his contention that the NJP he received, and the subsequent Punitive Letter of Reprimand was based on erroneous information. He alleges he was not guilty of Sexual Harassment, Maltreatment, Attempted Fraternization, and Conduct Unbecoming an officer.

c. The fitness report is a special/regular report submitted upon the member receiving Non-Judicial Punishment and awarded a Punitive Letter of Reprimand. In accordance with reference (a), Annex N, the reporting senior may comment on misconduct whenever the facts are clearly established to the reporting senior's satisfaction. The report is procedurally correct.

c. A fitness report does not have to be consistent with previous or subsequent reports. Each fitness report represents the judgment of the reporting senior during a particular reporting period. However, where a significant change occurs in a member's performance, the reporting senior should explain what prompted the change. In this case, the reporting senior has made it clear why he issued a report, which showed a significant decline in the member's performance.

d. The member does not prove the report to be unjust or in error.

3. We recommend the member's record be changed by deleting the following in block-41-(*35):
"and sexual harassment"



Head, Performance
Evaluation Branch